

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COMPASS, INC. AND COMPASS  
WASHINGTON, LLC

Plaintiffs,

v.

NORTHWEST MULTIPLE LISTING  
SERVICE,

Defendant.

Case No. 2:25-cv-00766

DEFENDANT NORTHWEST MULTIPLE  
LISTING SERVICE'S MOTION FOR  
PROTECTIVE ORDER TO STAY  
DISCOVERY

NOTE ON MOTION CALENDAR:  
July 24, 2025

ORAL ARGUMENT REQUESTED

Defendant Northwest Multiple Listing Service ("NWMLS") seeks entry of a protective order staying discovery pending the Court's ruling on NWMLS's motion to dismiss. If the motion to dismiss is granted, it will be dispositive of all claims. Plaintiffs Compass, Inc. and Compass Washington, LLC (collectively "Compass") have no need for immediate discovery and will suffer no prejudice where, as here, the motion to dismiss will be fully briefed for consideration in a matter of weeks. The overly broad discovery sought by Compass is burdensome on its face and, importantly, unnecessary for resolution of the motion to dismiss. A short stay of discovery is in the interests of justice and efficiency. A stay should be granted.

**I. FACTUAL BACKGROUND**

NWMLS provides multiple listing service services in Washington and Oregon, and its members, including Compass, are real estate brokerage firms that operate as shareholders and

MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY - 1

1 owners of NWMLS. Dkt. 1 at ¶¶ 24–25. NWMLS provides services for its members, including “a  
2 property listing system, public records database, online showing scheduling, electronic forms and  
3 signatures, mobile applications, cloud storage, data analytics, keybox services, and regional  
4 member service centers.” *Id.* at ¶ 25. NWMLS also licenses its members’ property listings in a  
5 data feed, which contains all NWMLS member listings and is available to all member firms,  
6 including Compass, and other large national brokerages, such as Zillow and Redfin. *Id.* at ¶¶ 33–  
7 34. The data feed contains all NWMLS member listings, including those submitted by all other  
8 brokers, and members use it to populate their own public websites through a program called  
9 Internet Data Exchange (“IDX”). *See id.* at ¶¶ 11, 36, 73.

10 NWMLS is governed by rules with which members must comply to participate in  
11 NWMLS’s offered services. *Id.* at ¶ 36. NWMLS’s Data Use Policy provides, among other things,  
12 that a violation of NWMLS’s rules can result in a fine and/or license revocation (i.e., termination  
13 of access to NWMLS’s data feed of listings). *Id.* at ¶ 36. This case stems from NWMLS’s  
14 enforcement of those rules, and Compass’ challenge to NWMLS rules. Compass alleges that  
15 NWMLS, through enforcement of its rules, violated Sections 1 and 2 of the Sherman Act, violated  
16 state antitrust law under the Consumer Protection Act, and engaged in tortious interference. *See*  
17 *generally id.*

18 The Complaint was filed on April 25, 2025. *See id.* at 1. In accordance with the Court’s  
19 order, the parties participated in a Rule 26(f) conference on May 27, 2025, exchanged initial  
20 disclosures on June 9, 2025, and filed a joint status report on June 16, 2025. Dkt. 25 at 1, 4. During  
21 the Rule 26(f) conference, NWMLS indicated that it intended to file a motion to dismiss, and asked  
22 Compass to agree to hold off on discovery pending resolution of the motion. *Id.* at 5–6 (explaining  
23 that NWMLS is a modest not-for-profit company and discovery in antitrust cases is notoriously  
24 burdensome and costly). Compass refused. *Id.* at 4–5 (contending stay of discovery is not  
25 automatic or warranted). On June 24, 2025, Compass issued nine interrogatories and 51 requests  
26 for production. Declaration of Christopher R. Osborn (“Osborn Decl.”), Exs. A, B.

MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY - 2

1 The discovery requests are overly broad, seeking, for example:

- 2 • All Documents relating to or reflecting Communications concerning Compass or a
- 3 Compass-affiliated Broker. (Request No. 13)
- 4 • All Documents relating to or reflecting Communications concerning the Challenged
- 5 NWMLS Rules. (Request No. 14)
- 6 • All Documents relating to the role of NWMLSs in the market for real estate services,
- 7 including any actual or potential competitors of or alternatives to the NWMLSs.
- 8 (Request No. 39)
- 9 • All Documents and data concerning projected, estimated, planned or actual conditions
- 10 • in the markets for residential real estate and Real Estate Services, including (i) the
- 11 extent, level, or type of competition; (ii) market share of the NWMLS; (iii) residential
- 12 real estate costs, supply, and demand; (iv) consolidation, mergers, acquisitions, or joint
- 13 ventures; (v) fixed or variable costs; (vi) substitute products; (vii) residential real estate,
- 14 Broker, or agent capacity or supply; (viii) profits, revenues, and loss information; or
- 15 (ix) other industry statistics. (Request No. 40)
- 16 • All Documents relating to the benefits of membership in the NWMLSs. (Request No.
- 17 43)

18 *Id.*, Ex. B.

19 The burden the discovery requests would impose upon NWMLS is difficult to overstate.  
 20 Preparing objections to the voluminous requests, including as to scope, confidentiality, and  
 21 vagueness, will require close analysis by and considerable input from counsel for NWMLS  
 22 working with already fully occupied NWMLS staff. Osborn Decl. ¶ 7. NWMLS will be forced to  
 23 engage electronic discovery vendors to help gather and analyze what will be a database of more  
 24 than a million electronic records, which would not include hard copy documents arguably more  
 25 difficult to process. *Id.* Reviewing the documents and ultimately preparing substantive responses  
 26 to the discovery requests will be a huge expense measured in the hundreds of thousands of dollars

MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY - 3

1 in terms of attorney fees, electronic discovery vendors, and NWMLS employee time—all a  
 2 potentially unnecessary waste of a not-for-profit’s members’ limited resources. *Id.*

3 On June 30, 2025, NWMLS timely responded to the Complaint, filing a motion to dismiss  
 4 all claims under Rule 12(b)(6). Dkt. 27. After filing its motion to dismiss, NWMLS again asked  
 5 Compass to stay discovery pending resolution of the motion. *Id.* ¶ 9. Compass again declined, thus  
 6 necessitating this motion. *Id.*

## 7 II. ARGUMENT AND AUTHORITY

8 “[D]istrict courts have the inherent authority to manage their dockets and courtrooms with  
 9 a view toward the efficient and expedient resolution of cases.” *Dietz v. Bouldin*, 579 U.S. 40, 47  
 10 (2016) (collecting cases). “As part of that authority, district courts have ‘wide discretion in  
 11 controlling discovery,’ including by staying discovery when warranted.” *Jan v. People Media*  
 12 *Project*, Case No. 3:24-cv-05553-TMC, 2024 WL 4818503, at \*1 (W.D. Wash. Nov. 18, 2024).

13 Courts consider the following factors in determining whether to stay discovery while a  
 14 Rule 12(b) motion is pending: “(1) whether the pending motion could dispose of the entire case;  
 15 (2) whether the motion could be decided without additional discovery; (3) the possible damage  
 16 which may result from the granting of stay; (4) the hardship or inequity which a party may suffer  
 17 in being required to go forward; and (5) the orderly course of justice measured in terms of the  
 18 simplifying or complicating of issues, proof, and questions of law which could be expected to  
 19 result from a stay.” *Subspace Omega, LLC v. Amazon Web Services, Inc.*, Case No. 2:23-cv-01772-  
 20 TL, 2025 WL 4451404, at \*1 (W.D. Wash. Oct. 9, 2024) (internal quotations omitted) (citing *HUB*  
 21 *International Northwest LLC v. Larson*, Case No. 2:22-cv-01418-TL. 2023 WL 2527150, at \*3  
 22 (W.D. Wash. Mar. 15, 2023)); *see also Jan*, 2024 WL 4818503, at \*1; *D’allo v. Modrijan*, Case  
 23 No. 3:24-cv-05325-TMC, 2025 WL 691650, at \*2 (W.D. Wash. Mar. 4, 2025). Applied here, all  
 24 factors support entry of a stay of discovery.

25 //

26 //

MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY - 4

**A. NWMLS’s Motion to Dismiss is Dispositive.**

NWMLS’s motion to dismiss would be completely dispositive. The motion seeks dismissal of all claims against NWMLS under Rule 12(b)(6). There is, therefore, no question that the pending motion could dispose of the entire case if granted by the Court. *See Subspace Omega*, 2025 WL 4451404, at \*2 (“Without commenting on the merits of Defendant’s pending motion, the Court notes that the motion is not frivolous and could dispose of the entire case, as Defendant seeks dismissal of all of Plaintiff’s claims. ... It is simply relevant (though certainly not sufficient overall) that the motion may be completely dispositive.”).

**B. No Discovery is Necessary to Resolve the Motion to Dismiss.**

Given that the motion to dismiss was made under Rule 12(b)(6), no discovery is necessary to resolve the motion. Indeed, “[t]he purpose of F.R.Civ.P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery.” *Rutman Wine Co. v. E & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). That is precisely the case here.

**C. Compass Will Not Be Harmed by a Limited Stay of Discovery.**

This case is in its infancy. The complaint was recently filed on April 25, 2025. NWMLS timely filed its motion to dismiss on June 30, 2025, 60 days from the date it accepted service of the complaint. The motion has been noted on the standard 28-day schedule under LCR 7 and will be fully briefed by July 28, 2025. In other words, NWMLS’s motion comes at the earliest possible opportunity, well in advance of the discovery cutoff or trial in this matter. *See* Dkt. 26. If the motion is granted, there can be no harm because Compass’s claims were meritless to begin with. If it is denied wholly or in part, there remains ample time under the case schedule to conduct discovery and prepare for trial.

Compass has put forward no need for immediate discovery. Compass filed no motion for injunctive relief at the outset of the case, and did not seek to expedite discovery. It can offer no compelling reason for forcing discovery at this stage. *See In re Graphics Processing Units*

1 *Antitrust Litig.*, Case No. C06-7417, 2007 WL 2127577, at \*5 (N.D. Cal. July 24, 2007) (granting  
 2 motion to stay discovery where there was no “compelling need for prompt discovery, such as might  
 3 be the case if provisional relief were being sought or if testimony needed to be preserved due to ill  
 4 health of a witness”).

5 **D. NWML Will Suffer Hardship If Discovery Is Not Stayed.**

6 NWMLS will suffer significant hardship and inequity if required to engage in discovery  
 7 while its motion to dismiss is pending, given the scope and nature of the claims and discovery  
 8 requests. “In antitrust cases [staying discovery while a Rule 12(b) motion remains pending] makes  
 9 sense because the costs of discovery in such actions are prohibitive.” *Rutman Wine Co.*, 829 F.2d  
 10 at 738; *see also In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal. 2007) (“[S]taying  
 11 discovery may be particularly appropriate in antitrust cases, where discovery tends to be broad,  
 12 time-consuming, and expensive.”). These hardships will have an outsize impact on NWMLS, a  
 13 private, broker-owned, not-for-profit corporation with modest resources, especially where  
 14 Compass has already pursued broad discovery despite knowing of NWMLS’s motion to dismiss.  
 15 *See* Dkt. 25 at 5–6; Osborn Decl. ¶ 7; *Jan*, 2024 WL 4818503, at \*3 (finding fourth factor weighed  
 16 in favor of stay where “if discovery were to proceed, Defendants have identified specific hardship  
 17 or equity they may suffer. Defendants assert that ‘during [the discovery conference], Plaintiff’s  
 18 counsel made it clear that this case would involve extensive discovery ...’. Defendants argue that  
 19 ‘[they]—a small non-profit chronicle and its managers—have meager resources which will be  
 20 greatly strained if they are forced to proceed with discovery, especially if that discovery is made  
 21 unnecessary by the granting of the Motion to Dismiss.’”).

22 **E. A Stay is in the Interest of Justice.**

23 A stay of discovery pending the Court’s ruling on the motion to dismiss is in the interest  
 24 of justice because it will simplify the issues, proof, and questions of law at issue in this case. Even  
 25 if partially granted by the Court, a ruling on the motion to dismiss will narrow the issues presented  
 26 in this case and accordingly allow the parties to focus their efforts in discovery. *See Subspace*

1 *Omega*, 2025 WL 4451404, at \*2 (“and even if the motion does not result in complete dismissal  
 2 of all claims, the issues are more likely to be simplified than complicated, and the Parties will have  
 3 a greater understanding of the claims as they engage in discovery.”); *see also In re Graphics*  
 4 *Processing Units Antitrust Litig.*, Case No. C06-7417, 2007 WL 2127577, at \*5 (N.D. Cal. July  
 5 24, 2007) (“[A]djudicating the motions to dismiss will shed light on the best course for  
 6 discovery.”).

### 7 **III. CONCLUSION**

8 Good cause exists to stay discovery pending resolution of NWMLS’ motion to dismiss.

9 *I certify that this memorandum contains 1968 words, in compliance with the Local Civil*  
 10 *Rules.*

11 *I certify that in accordance with the Court’s Chambers Procedures – Civil 3.1, counsel for*  
 12 *the parties conferred on May 27, 2025, May 30, 2025, and June 4, 2025, as part of the Rule 26(f)*  
 13 *conference, about NWMLS’ request to stay discovery pending resolution of its motion to dismiss*  
 14 *but were ultimately unable to reach agreement. I further certify that on July 9, 2025, after Compass*  
 15 *served its discovery requests and NWMLS filed its motion to dismiss, counsel again conferred by*  
 16 *telephone about NWMLS’ request to stay discovery, and on July 10, 2025, Compass confirmed its*  
 17 *refusal to a stay of discovery. Therefore, the parties were unable to reach a resolution short of*  
 18 *motion practice. Osborn Decl. ¶ 8–9.*

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY - 7

1 DATED: July 10, 2025

2 STOEL RIVES LLP

3 s/ Vanessa Soriano Power

4 Vanessa Soriano Power, WSBA No. 30777

5 Christopher R. Osborn, WSBA No. 13608

6 Harrison L. Owens, WSBA No. 51577

600 University Street, Suite 3600

Seattle, WA 98101

Telephone: (206) 624-0900

Facsimile: (206) 386-7500

Email: [vanessa.power@stoel.com](mailto:vanessa.power@stoel.com)

Email: [chris.osborn@stoel.com](mailto:chris.osborn@stoel.com)

Email: [harrison.owens@stoel.com](mailto:harrison.owens@stoel.com)

9 Claude Szyfer (*pro hac vice*)

10 Hogan Lovells US LLP

11 390 Madison Avenue

New York, NY 10017

12 Telephone: 212-918-3000

Email: [claudio.szyfer@hoganlovells.com](mailto:claudio.szyfer@hoganlovells.com)

13 Liam Phibbs (*pro hac vice*)

14 Hogan Lovells US LLP

Columbia Square

15 555 Thirteenth St. NW

Washington, DC 20004-1109

16 Telephone: 202-637-5600

Email: [liam.phibbs@hoganlovells.com](mailto:liam.phibbs@hoganlovells.com)

17 *Attorneys for Defendant*

18 *Northwest Multiple Listing Service*